

**AMENDMENT**

**In The Claims:**

Please amend claim 1 as follows:

Claim 1 (Twice Amended). A cleansing composition comprising

- a. from about 10 percent to about 35 percent, based upon the total weight of the composition of a liquid silicone;
- b. from about 10 percent to about 35 percent, based upon the total weight of the composition of at least two water dispersible components selected from water dispersible components that when combined with at least a weight equivalent of water produces (i) a uniform clear mixture or (ii) uniform hazy mixture; and
- c. from about 55 percent to about 65 percent, based upon the total weight of the composition of at least two liquid esters selected from the group consisting of (i) liquid esters that possess a structural means for ensuring the liquidity of the ester; and (ii) heterogeneous esters.

Please cancel claim 2.

**REMARKS**

**I. Status of the Claims**

Upon entry of this Amendment, claims 1, 3-7, 9-50 and 52-61 are pending in this Application. Claims 1 has been amended in an effort to more clearly define that which Applicants consider to be their invention. Support for the amendment to claim 1 can be found in original claim 2. Claim 2 has been canceled as the limitations therein have been incorporated into claim 1. No new matter has been introduced by this Amendment.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page(s) is/are captioned "Version with markings to show changes made."


## II. Double Patenting Rejection

The Examiner has provisionally rejected claim 1 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of copending Application No. 09/745,270. Applicants respectfully traverse this rejection. Nevertheless, in an effort to expedite prosecution, Applicants will file a terminal disclaimer upon indication that the claims are in condition for allowance.

## III. Rejections Under 35 U.S.C. § 102

The Examiner has set forth four rejections under 35 U.S.C. § 102 in view of U.S. Patent No. 5,989,572 ("Habif et al."), U.S. Patent No. 5,766,575 ("Crotty et al."), U.S. Patent No. 5,814,662 ("Znaiden") and U.S. Patent No. 5,871,756 ("Jeffcoat et al."). It appears to be the Examiner's position that each of the references disclose a composition containing two esters and that the two esters not only read on the esters of the presently claimed composition but also read on the water dispersible components of the presently claimed composition. Applicants respectfully disagree.

The esters present in the compositions disclosed by the above references are not water dispersible. As discussed in the Specification, the term "water dispersible component" shall mean a material that produces a uniform, clear or hazy, mixture when combined with at least a weight equivalent of water. See specification, page 5, lines 22-25. The Examiner argues that the term "hazy" is very broad and can be interpreted as meaning anything that is not clear. The water dispersible components present in the claimed composition are components that not only will produce a clear or hazy mixture when combined with at least a weight equivalent of water but the mixture must also be uniform. Applicants respectfully submit that not all components will produce a uniform clear or hazy mixture when combined with at least a weight equivalent of water. Accordingly, since none of the references relied upon by the Examiner teach or suggest Applicants claimed invention comprising at least two water dispersible components and at least two liquid esters, wherein the liquid esters possess a structural means for ensuring the liquidity of the ester; and (ii) heterogeneous esters and




wherein the water dispersible components produce (i) a uniform clear mixture or (ii) uniform hazy mixture when combined with at least a weight equivalent of water, the references cannot anticipate the present claims.

Nevertheless, solely in an effort to expedite prosecution, Applicants have amended claim 1 so that the limitations of claim 2 are now incorporated in claim 1. Claim 2 was not rejected under 35 U.S.C. § 102. Applicants, therefore, respectfully request withdrawal of the rejections of claims 1, 3, 5, 9, 10, 17, 18, 25, 26, 30, 31, 33-35, 37, 38, 54-56, 60 and 61 under 35 U.S.C. § 102 as these claims now include the limitations of claim 2.

#### IV. Rejections Under 35 U.S.C. § 103

The Examiner has rejected claims 1-7, 9-50 and 52-61 under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent No. 5,814,662 ("Znaiden et al."). Applicants respectfully traverse this rejection.

Znaiden et al. relates to cosmetic compositions comprising alpha-hydroxycarboxylic acids of mixed chain lengths. The compositions are taught to be useful for treating skin conditions selected from dermatologic skin disorders, chronoaging, environmental abuse and combinations thereof. The Examiner points to Examples 2, 5 and 6 of Znaiden et al. However, none of these examples disclose a composition as described by Applicants claimed invention, *i.e.*, comprising (a) a liquid silicone; (b) at least two water dispersible components; and (c) at least two liquid esters wherein the liquid esters possess a structural means for ensuring the liquidity of the ester; and (ii) heterogeneous esters and wherein the water dispersible components produce (i) a uniform clear mixture or (ii) uniform hazy mixture when combined with at least a weight equivalent of water. The Examiner recognizes that Znaiden et al. fails to teach the specific mixtures of esters and dispersants presently claimed. However, it is the Examiner's position that "each of the presently claimed esters and dispersants are well known in the art for use in personal cleansing and cosmetic compositions" and that "It would have been obvious to one of ordinary skill in the art to use




well known esters and dispersants in the skin treatment compositions of Znaiden et al. as esters and dispersants are taught as preferred components in their invention.” Applicants respectfully disagree.

The Examiner has failed to provide any teaching or suggestion in Znaiden et al. that would provide one of ordinary skill in the art with the motivation to incorporate these alleged “well known in the art” esters and dispersants into the compositions disclosed by Znaiden et al. Further, it is unclear why one of ordinary skill in the art would have any expectation that esters and dispersants not taught by Znaiden et al. could successfully be incorporated into the Znaiden et al cosmetic compositions, *i.e.*, there is no reasonable expectation of success.

In contrast to the alpha-hydroxycarboxylic acid containing compositions taught by Znaiden et al, Applicants claimed invention relates to a cleansing composition comprising (a) from about 10 percent to about 35 percent, based upon the total weight of the composition of a liquid silicone; (b) from about 10 percent to about 35 percent, based upon the total weight of the composition of at least two water dispersible components; and (c) from about 55 percent to about 65 percent, based upon the total weight of the composition of at least two liquid esters. The water dispersible components are selected from water dispersible components that when combined with at least a weight equivalent of water produces (i) a uniform clear mixture or (ii) uniform hazy mixture. The liquid esters are selected from (i) liquid esters that possess a structural means for ensuring the liquidity of the ester; and (ii) heterogeneous esters.

As discussed in the Specification, Applicants have discovered that the above described combination of liquid silicone, water dispersible components and liquid esters results in cleansing compositions suitable for use in personal cleansing applications, in particular make-up removal applications, which not only impart superior cleansing properties, but also which are relatively non-irritating and thus suitable for use by people having sensitive skin and eyes. Specification, page 1, lines 14-18. Indeed, as shown by Examples 1, 19 and 20, compositions according to the invention were superior to known commercial cleansers in removing foundation, lipstick and mascara from the skin. This finding of a



cleansing composition having superior cleansing properties without irritation is neither taught nor suggested by the prior art relied upon by the Examiner.

Accordingly, Applicants respectfully submit that Znaiden et al. fails to render the present claims obvious. Therefore, the rejection should be withdrawn.

**V. Conclusion**

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-503/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Claim 1 (Twice Amended). A cleansing composition comprising

- a. from about 10 percent to about 35 percent, based upon the total weight of the composition of a liquid silicone;
- b. from about 10 percent to about 35 percent, based upon the total weight of the composition of at least two water dispersible components selected from water dispersible components that when combined with at least a weight equivalent of water produces (i) a uniform clear mixture or (ii) uniform hazy mixture; and
- c. from about 55 percent to about 65 percent, based upon the total weight of the composition of at least two liquid esters selected from the group consisting of (i) liquid esters that possess a structural means for ensuring the liquidity of the ester; and (ii) heterogeneous esters.

Please cancel claim 2.